

**MINUTES**

**1. CONVENE CITY COUNCIL REGULAR MEETING**

Mayor Labadie called the meeting to order at 7:00 P.M.

**A. Roll Call**

Present. Mayor Labadie; Councilmembers Johnson, and Callies; City Attorney Keane; City Administrator Lerud; City Clerk/HR Director Thone; Finance Director Rigdon; Planning Director Darling; Director of Public Works Brown; and, Assistant City Engineer Baumann

Absent: Councilmember Siakel

**B. Review Agenda**

**Johnson moved, Gorham seconded, approving the agenda as presented. All in favor, motion passed.**

**2. CONSENT AGENDA**

Mayor Labadie reviewed the items on the Consent Agenda.

Councilmember Callies had asked for some minor wording changes to the bottom of page two of the September 27, 2021 Work Session minutes. She noted that City Clerk Thone had already made the changes prior to the meeting.

**Callies moved, Johnson seconded, Approving the Motions Contained on the Consent Agenda, with the amended September 27, 2021 minutes, and Adopting the Resolutions Therein.**

- A. City Council Work Session Minutes of September 27, 2021**
- B. City Council Regular Meeting Minutes of September 27, 2021**
- C. Approval of the Verified Claims List**
- D. Approval of Retail Tobacco Licenses, Adopting RESOLUTION NO. 21-113, "A Resolution Approving Licenses to Retailers to Sell Tobacco Products."**
- E. Accept Final Improvements and Approve Final Payment for Badger Park Tennis Courts, City Project 20-01, Adopting RESOLUTION NO. 21-114, "A Resolution for Final Acceptance and Payment for Badger Park Tennis Court Reconstruction Project, City Project 20-01."**

- F. **Adopt Development Agreement Amendments Walnut Grove Villas, Adopting RESOLUTION NO. 21-115, “A Resolution Approving Amendments to the Development Agreement and an Extension to the Final Plat Approval for the Walnut Grove Villas PUD located North of Highway 7 between Eureka Road and Seamans Drive.”**

All in favor, motion passed.

**3. MATTERS FROM THE FLOOR**

Chris Hoth, 26395 Peach Circle, stated that he had seen that at the last meeting the resident on Strawberry Court came and told the City that they would like to get water even if it was out of turn. He stated that there are many residents on Peach Circle who are also interested in trying to get on City water. He stated that he thinks their reasons are similar to the Strawberry Court residents which are things like safety and things like not having any fire hydrants nearby as well as the high arsenic levels in the neighborhood. He stated that he wanted to make sure the Council knew of their interest as they made decisions.

Stuart Schulman, 26425 Strawberry Court, stated that he watched the last Council meeting and perused the Council packet and wanted to echo the comments his wife, Danya Schulman, made and support her plea for reconsideration. He stated that he had the feeling from the Council that this is a newer topic of conversation and it is not. He stated that he noted page eighty-seven there is a reference to communication that in 2021 this would be brought on the floor but knows that his wife has sent multiple e-mails and had multiple conversations with the City that go back to the year 2018. He stated that he wanted to set the record straight that this is not a new topic and have his voice heard.

Dania Schulman, representing Susan Landa, 26575 Strawberry Court, explained that Ms. Landa was unable to be here tonight but asked her to appear on her behalf. She read aloud an e-mail that was sent from Ms. Landa that expressed her disappointment with the delay in the water project for their neighborhood.

**4. PUBLIC HEARING - NONE**

**5. REPORTS AND PRESENTATIONS - NONE**

**6. PARKS - NONE**

**7. PLANNING - NONE**

**8. ENGINEERING/PUBLIC WORKS**

- A. **Approve Quotes for Water Meter Registry Replacement and Authorize Purchase of Meter Registers**

Public Works Director Brown explained that in 2007 the City awarded a contract to furnish and install radio read water meters. He noted that this technology allows staff to drive down the road where water is available and collect the meter readings for billing purposes. He stated that the units are powered by a battery and at installation they were warrantied for twenty years with full replacement during the first ten years and prorated for the next ten years. The City has about

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two-hundred fifty units that have failed to provide a reading and about twenty-five meters that appear to be having a problem with the meter itself. Staff has solicited quotes from two firms that specialize in replacing and installation of the meters with Ferguson Waterworks coming in the lowest.

Councilmember Callies asked questions about the components of a water meter. Public Works Director Brown gave a brief explanation of the components of the water meters. Councilmember Gorham asked how many meters the City currently has. Public Works Director Brown stated that there are about 1,500 of this type of meter in the City. He noted that they attempt to deal with the meters as a problem arising, but with this being close to the end of life for the batteries there is a larger number of them that need to be addressed. He stated that he would expect there to be another contract or two further down the road to address other units as the batteries continue to reach the end of their life.

City Administrator Lerud stated that COVID-19 has resulted in a suspension of all in-home work unless it was an emergency so anything that would have normally been done by staff over the last sixteen months is included with the total number of meters in this proposal.

Public Works Director Brown noted that he had failed to mention in his report that if this project moves forward, staff had recommended that CARES Act funds could be used to pay for them. Finance Director Rigdon stated that he does not think it will be a problem using the ARPA money for this purpose.

Councilmember Johnson stated that the Council had given Finance Director Rigdon some guidance on how to spend the CARES Act funds and asked if using this money for this purpose would take anything away from the guidance that was previously given. Finance Director Rigdon that it will not take away from anything else because it was assumed to be included already.

**Johnson moved, Gorham seconded, Adopting RESOLUTION NO. 21-116, “A Resolution Approving Quote for Water Meter Register Replacement and Authorizing Purchase of Water Meter Registers and Meters from Ferguson Waterworks in the amount of \$22,125, City Project 21-09.” All in favor, motion passed.**

**Johnson moved, Gorham seconded, Authorizing the purchase of water registers and water meters estimated at \$44,825, City Project 21-09. All in favor, motion passed.**

**B. Strawberry Court Waterman**

Public Works Director Brown introduced Assistant City Engineer Baumann and explained that the Council has asked staff to evaluate the possibility of constructing the watermain for Strawberry Court in 2022. He gave an overview of what the original Strawberry Lane project was supposed to be that staff had requested that this project be delayed to 2023. He gave an overview of the plans for open trench construction for Strawberry Lane. He stated that moving the Strawberry Court project to 2022 bypassing the Strawberry Lane project will be more expensive and staff is recommending that it be done at the same time as Strawberry Lane in 2023.

Councilmember Callies stated that in her opinion, it does not make sense to separate these projects. She stated that she does have some questions about the timeline because, to her, it still seems possible that the whole project could still be done in 2022. She stated that following

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the open house, she does not know why the City would not be ready to make a decision by November which would allow it to be done in 2022.

Public Works Director Brown stated that it has become clear that there needs to be some modifications to the communications plan. He stated that as they revamp the communications plan, they are concerned about short-circuiting this project, as it pertains to Strawberry Court and Peach Circle. He stated that at the Open House there will be a preliminary layout, but without the construction limits that are determined through the preliminary design process, the city will not know the amount of right-of-way that would need to be acquired. He stated that this is when the right-of-way acquisition process would begin and noted that there are just a lot of unknowns up until that point. He stated that it is not impossible but reiterated his concern that it would shortcut the communication, input, and decision-making process.

Mayor Labadie asked what happened if the City was unable to acquire what it needs in terms of easements and right-of-way. Public Works Director Brown stated that it would put a halt to the construction process. Councilmember Callies stated that she would expect the City could do a quick take, if necessary, which would not really hold up the process.

Public Works Director Brown agreed that quick take acquisition is a tool that is available to the City, but getting to that point is critical. He stated that the design process starts from the Open House which will determine which easements are needed to even get to the quick take process. He stated that it can be done but it will not offer many frills or time for effective communication. He stated that he is concerned that people will feel rushed and uninformed at that point.

Councilmember Gorham stated that a decision would essentially have to be made at the Open House. Public Works Director Brown stated that a decision would have to be made somewhere close to that point. Councilmember Gorham asked if the City would change the way it installed the watermain, for example, go back to an open cut method, if they stayed with the planned 2023 construction season. Public Works Director Brown stated that they would go back to an open cut method for installation.

Councilmember Gorham asked if this went out for bid for Strawberry Court and Peach Circle in the spring if the engineering staff's time would be adversely affected. He asked if it would delay any other projects. Assistant City Engineer Baumann stated that they could adjust, as needed, so other projects are not affected by the timing of this work.

Councilmember Gorham asked if staff could pursue parallel paths of a design for Strawberry Court and Peach Circle as well as try to thread the needle on full-blown construction in 2022. Assistant City Engineer Baumann stated that they could do that if they had to.

Mayor Labadie stated that the City is wrapping up a successful road project with Glen/Manitou/Amlee. She stated that looking ahead, she is worried as she sees things like Highway 7 being torn up and the project delayed when staff is telling the Council they have concerns. She stated that she has concerns about overriding their professional judgement. She stated that the item on tonight's agenda was that the Council had asked staff to look into the matter relating to Strawberry Court and their recommendation is that Strawberry Lane, Strawberry Court, and Peach Circle be conducted as one project. She noted that the Council will not be able to make a decision on the overall timeline and suggested that the discussion surround the issue that staff researched for the meeting which is whether Strawberry Court and Peach Circle could be done independently of Strawberry Lane or done together.

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Councilmember Callies stated that she thinks the Council could make a decision on the overall timeline and the project. She stated that she had made a comment at a prior meeting that this issue was never really put on the table for the Council to make a decision about Strawberry Lane being postponed. She stated that she does not completely agree with how that moved forward but does agree that, at this point in time, based on what staff is saying, that it does not make sense to go forward with it right now and that these projects should be combined as one project. She noted that unfortunately there is not enough time to address all the issues in order to get it completed in 2022.

Councilmember Gorham stated that this is not a risk-free idea. He explained that his main issue with trying it is that it will change how the City sends watermain down the street and will cause new complexities with crossing utilities. He stated that the safest way to move forward is how they originally intended to and not do things too impatiently. He stated that he thinks the right way is for it to all be done at once and not spread out over numerous years in separate projects.

Councilmember Johnson stated that pedestrian safety is a chief concern here considering the location of the school at the end of the street. He stated that from a scheduling perspective one of the chief missions is to ensure that the project is done by the time school starts. He stated that he would put that one item as a premium over time.

Mayor Labadie stated that this type of project is a decision and will impact the City's footprint for generations and is not just impacting the current residents. She stated that she thinks taking time to do it right is the correct approach.

Councilmember Callies stated that there seems to be a discrepancy or difference of opinion when residents feel that they have not been heard and the fact that the Council may not be agreeing with what they have said. She stated that many comments have been heard and the Council has seen the e-mails and taken them into consideration. She stated that those e-mails have been sent over a period of time and just because the decision does not coalesce with a group of residents it does not mean that their voices have not been heard. She stated that the Council is willing to hear more from the residents and that means taking more time to consider everything. She stated that she does not see a way around this other than to do the projects together and have it completed in 2023.

Mayor Labadie noted that she agreed and does not think the Council will be able to please everyone. She stated that the Council needs to follow the advice from staff to keep the projects together as one large project.

**Callies moved to direct staff to move forward with Strawberry Court and Peach Circle watermain project as part of the overall Strawberry Lane street reconstruction project in 2023.**

Councilmember Johnson stated that a lot of people are looking for commitments that this project will not get kicked down the road beyond 2023 because that has been the perceived pattern. He asked if this project has ever been this close to construction before. Public Works Director Brown stated that it has not ever been this far along in the process.

Councilmember Johnson stated that he is hearing a commitment from both Council and staff to get this project completed in 2023.

**Johnson seconded the motion. All in favor, motion carried.**

**9. GENERAL/NEW BUSINESS**

**A. Interactive Technology**

City Administrator Lerud stated that the City has been using interactive technology since the beginning of the pandemic in March of 2020. State Statute was amended during their last session to update terminology, conditions, and circumstances for the use of the interactive technology in Council meetings. He stated that there is no statutory requirement for use of interactive technology for meetings held outside of a pandemic or non-emergency times, however, it is staff's recommendation that the Council approve incorporating interactive technology into the Council meetings, subject to the conditions included in the staff report.

Councilmember Gorham asked about the condition who states the participant must be on camera and be able to be seen. City Administrator Lerud stated that is in place to assure that the Council knows it is them and gave the example of a different screen name than the person who is speaking. He stated that if the participation is allowed, the Council should know who is speaking. Councilmember Callies stated that her understanding of what is being proposed is that it should be pretty much the same as if someone were here in person and should not get special treatment.

Councilmember Gorham stated that he agrees with that point but feels the point of this is also to make it more democratic and accessible and does not want this to create a situation where now people have to go out to Target and buy a camera. Councilmember Callies stated that she understood his point but disagree with the use of the word 'democratic' because it is not undemocratic to not have Zoom, particularly since the law does not require it. She asked if the meeting was currently being shown on Zoom.

Councilmember Callies stated that she would like to know when someone is participating via Zoom. City Administrator Lerud noted that people come and go throughout the meeting and could be disruptive if they were announced anytime someone joined. He explained what the view is when on Zoom, for example, when the camera view is shown and when the agenda is shown.

Councilmember Callies stated that she would like it to be clear, as stated in the first condition, that this is not required by law.

City Administrator Lerud noted that if Zoom happens to go down, the meeting with continue without it. Councilmember Callies stated that she also had questions about people being on the camera because people will sit in the back of Council chambers and just be there and not participate in the meeting. She asked if her understanding was correct that the key word is 'participate'.

Councilmember Callies suggested re-wording condition six to something like, 'in the exercise of its reasonable discretion the Council retains the right to discontinue remote public participation'.

Mayor Labadie stated that she had also flagged condition six and likes the language proposed by Councilmember Callies. She noted that there have been other instances where the City has been a forerunner and gone above and beyond what was required. She stated that she does not want the City to back themselves into a hole and asked if, in conjunction with the language change

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proposed by Councilmember Callies, if it would also be prudent to put some sort of timeframe in the language that it be re-evaluated to determine whether it was promoting positive public involvement. She reiterated the point that remote participation in meetings is not currently required by Minnesota State law so this is going above and beyond the requirements. She stated that she had discussed this with other area mayors and no other cities are currently proposing this. She stated that down the road, if they chose to, she would like the City to be able to go back to the traditional way of conducting meetings that is mandated by State law.

Councilmember Callies stated that is why she would like to see more neutral language and remove the phrase 'positive public involvement' because that is subjective. She asked if Mayor Labadie was proposing a trial period.

Mayor Labadie stated that did run through her mind and asked the remainder of the Council what their opinion was on a trial period. Councilmember Johnson stated he likes the idea because it give the opportunity revisit the issue and improve it. Mayor Labadie stated that it would also give the opportunity to make a change if it was not working.

Councilmember Gorham asked about condition seven and what the logic was to limit it to only City Council meetings. City Administrator Lerud stated that there is not adequate staff to enable this to happen at Commission meetings and they are not recorded through LMCC which would add a large expense to add it. He stated that Work Sessions would also not be included, just the regular City Council meetings.

Councilmember Callies noted that because the City Council has the right terminate this action, the language to add a trial period may not be necessary. City Administrator Lerud suggested that they set a date and staff can come give a report on how it has been working. He suggested that staff give that report at the first meeting of April 2022.

Councilmember Johnson suggested that the report happen a bit earlier in January or February. He stated that in some of the communications that the City has received from residents one thing continues to pop up. He stated that it is the idea that Zoom is social media and to him, Zoom is not defined as social media and is a video conferencing tool. He stated that in his opinion, social media would be thinks like Facebook and Twitter and would like that distinction to be well understood.

Councilmember Callies stated that the other point that is important that has come up in the past is the issue about ADA. She stated that this has nothing to do with ADA laws.

**Callies moved, Gorham seconded, To Adopt the Interactive Technology Policy, with the conditions as amended during the discussion. All in favor, motion passed.**

**10. STAFF AND COUNCIL REPORTS**

**A. Administrator and Staff**

**1. Covington Road Watermain Update**

Public Works Director Brown stated that Covington is a collector route that carries quite of traffic. He explained that the closure has occurred as planned and signs have been put up for detours

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but wanted residents to be aware that the closure is in place. He stated that he understands the revolving closure of Highway 7 makes it a bit of a challenge.

**Other**

Assistant City Engineer Baumann gave an overview on the cured in place pipe replacement for the Lake Lindon culvert. He explained that when the crew was out doing the sewer jetting in preparation for the project, they found that the pipe was too collapsed to be able to move forward with that method and had to pivot to the open cut method for replacement.

Public Works Director Brown stated that work will begin Monday, October 18, 2021 and noted that there will be an official change order at the next Council meeting.

Assistant City Engineer Baumann stated that the Shady Island bridge force main work will also begin next week.

**B. Mayor and City Council**

Councilmember Gorham stated that he is a long time Tonka United soccer coach and their season just finished last weekend. He stated that he wanted to commend Public Works Director Brown and his staff for the condition of Freeman Park this year and does not think there is enough acknowledgement on how nice the field has looked all season.

Councilmember Callies stated that with all the construction on the east side of town they have put the straw bollard in the drains but have not yet picked them up and they are overflowing.

Public Works Director Brown stated that this is a very timely subject as the forecast is calling for substantial rainfall over the next twenty-four hours. He stated that it is a tough balance because construction is 'done' but the watershed districts and other agencies require that the drain blocks be kept in place until there is an established vegetative cover because the erosion potential is still there until turf has been fully established. He stated that can be frustrating for people because construction is long gone and the ditch and catch basin blocks are still in place. He stated that they have been pushing the watershed district and based on the forecast, they were able to have many of those blocks removed today.

Councilmember Johnson stated that there was an Excelsior Fire and South Lake Minnetonka Police Department open house last Thursday which was extremely well attended. He stated that it was nice to see so many smiling faces. He stated that he would like to take off his virtual hat to Councilmember Callies and Mayor Labadie for volunteering at the event.

Mayor Labadie thanked Public Works staff for helping get the event ready and Communications Director Julie Moore and her husband, Rick, who volunteered the whole evening. She stated that Park Director Grout and her husband were also there for the event.

Mayor Labadie stated that she had gotten feedback that this was the best attended event that has taken place for years. She stated that she will be attending the upcoming South Lake Minnetonka Police Department Board meeting.

**11. CLOSED SESSION**



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Mayor Labadie stated that the meeting is being closed pursuant to MN Stat 13D.05, subd. 3(b), attorney-client privilege, to discuss litigation in Ugorets vs. City of Shorewood.

The council entered into closed session at 8:19.

The council came back into open session at 8:38.


**12. ADJOURN**

**Gorham moved, Johnson seconded, Adjourning the City Council Regular Meeting of October 12, 2021, at 8:39 P.M.**

All in favor, motion passed.

ATTEST:

  
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Sandie Thone, City Clerk

  
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Jennifer Labadie, Mayor